Where, however, the statute requires a certain standard of conduct in a case in which a duty of care existed at common law, another view is that the statute amounts to a legislative definition of due care under the circumstances in question. Although the language of a few of the cases lends some support to this contention,[13] the courts do not appear to make any distinction between cases where the statute creates a new duty and those where it merely enlarges an old one,[14] and such a distinction seems undesirable. Moreover, the legislature sometimes prohibits conduct which, though it is so often fraught with danger that it is thought to be for the public interest to forbid it, is not dangerous in every particular case. Therefore the prohibition of the conduct can hardly be regarded as a declaration by the legislature that no prudent man would engage in it under any circumstances.

It would seem, then, that the theory of tort liability for the violation of a statute is not the necessary consequence of any common-law principle. Nevertheless, as is illustrated by the law of public and private nuisance, the common law is in general as solicitous of the private as of the public interest in safety and well-being. Therefore, even though it is not necessarily true that a duty imposed for the protection of the plaintiff is a duty owed to him, the courts would seem to be justified in holding that where the legislature has recognized that a certain standard of conduct is required to safeguard the social interest in preventing some particular danger, a similar standard ought also to be maintained at common law to protect the individual interest.[15]

STATE AND NATIONAL REGULATION OF INTERSTATE AND FOREIGN COMMERCE IN INTOXICATING LIQUORS. — Although the United States Constitution gives to Congress the power to regulate interstate and foreign commerce,[1] the states, if Congress has not acted, may regulate matters as to which uniformity is unnecessary.[2] The states also seem to

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[13] Osborne *v.* McMasters, 40 Minn. 103, 41 N. W. 543; Sharkey *v.* Skilton, 83 Conn. 503, 77 Atl. 950.

[14] Whenever it is established that a statute was enacted to prevent the sort of injury which has occurred, the courts lay it down broadly that a violation of the statute, either by act or omission, is negligence. Terre Haute & I. R. Co. *v.* Voelker, 129 Ill. 540, 22 N. E. 20; Tobey *v.* Burlington, C. R. & N. Ry. Co., 94 Ia. 256, 62 N. W. 761; Leathers *v.* Blackwell Durham Tobacco Co., 144 N. C. 330, 57 S. E. 11. Moreover, this language is used in cases where the court recognizes that there was no pre-existing duty of care. See Hayes *v.* Michigan Central R. Co., 111 U. S. 228, 236, 4 Sup. Ct. 369, 372; Butz *v.* Cavanaugh, 137 Mo. 503, 511, 38 S. W. 1104, 1105.

[15] If the ground of liability be thus a duty to the plaintiff, and not a doctrine of absolute liability for the consequences of illegal conduct, it seems clear that no action should lie unless the injury be the natural result of that breach of duty and not merely a fortuitous consequence of the illegal course of action. Rich *v.* Asheville Electric Co., 152 N. C. 689, 68 S. E. 232; Bourne *v.* Whitman, *supra*. *Contra*, Iron Mountain R. Co. *v.* Dies, 98 Tenn. 655, 41 S. W. 860.

[1] U. S. Const., Art. 1, § 8.

[2] Thus the state may regulate pilotage. Cooley *v.* Board of Wardens, 12 How. (U. S.) 299. Or the qualifications of an interstate engineer. Smith *v.* Alabama, 124 U. S. 465, 8 Sup. Ct. 564.

have reserved certain inherent police powers.[3] Yet in 1888 it was determined that on neither of these grounds could a state control an interstate shipment of liquor while still in the hands of the carrier.[4] The court seemed to think that an interpretation of the police powers reserved by the state wide enough to permit them to regulate such a customary article of commerce would lead to chaotic restrictions as to other subject matters and destroy the uniformly free intercourse which the Constitution aimed to secure.[5] The doctrine which the court reached from this argument seems to be that in all matters requiring uniformity the jurisdiction of Congress is exclusive, and that the determination of what is a fit article for interstate free trade is a matter requiring uniformity. It is clear that the regulation of interstate liquor traffic would involve such a determination. Two years later the same doctrine was followed in holding that imported liquor was not subject to state control so long as it remained in the original packages.[6] The unfortunate situation created by these decisions was somewhat alleviated by the Wilson Act of 1890, which declared that "all intoxicating liquors . . . transported into a state . . . shall upon arrival in such state . . . be subject to the operation and effect of the laws of such state enacted in the exercise of its police powers" . . . as if produced therein.[7] The constitutionality of the act was upheld the following year.[8]

In view of the preceding cases, but two explanations of the decisions seem possible. The first is that Congress established a uniform rule by specifying a particular article of interstate commerce which after a certain point in its interstate career should be subject to police regulation. But the attempt to apply this theory to this Act produces a result inconsistent with the former decisions, since, instead of itself determining whether liquor is or is not a fit subject matter for complete interstate free trade, Congress in fact permits the state to do so. If the power was vested exclusively in Congress as previously held it could not be thus delegated. The sounder theory is that, as the power to regulate is given fundamentally to Congress, its declaration that uniformity as regards a particular subject is unnecessary should be accepted unless unreasonable, while if Congress has not acted the spirit of the Constitution requires that uniformity be preserved, whenever in the opinion of the court it is desirable.[9] It might be objected to this argument that the discretion of

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[3] Thus the state may regulate the sale of imitation butter shipped from without even though still in the original packages. Plumley *v.* Massachusetts, 155 U. S. 461, 15 Sup. Ct. 154. Or prohibit the importation or exportation of game in the closed season. Sily *v.* Hesterberg, 211 U. S. 31, 29 Sup. Ct. 10; Geer *v.* Connecticut, 161 U. S. 519, 16 Sup. Ct. 600.

[4] Bowman *v.* Chicago & Northwestern Ry. Co., 125 U. S. 465, 8 Sup. Ct. 689.

[5] Note the language of Matthews, J., 125 U. S. 465, 494, 8 Sup. Ct. 689, 705.

[6] Leisy *v.* Hardin, 135 U. S. 100, 10 Sup. Ct. 681. The power to regulate liquor was regarded in 1847 as one of the police powers reserved by the states. The License Cases, 5 How. (U. S.) 504. This view, it is submitted, was sound. The exclusion of the power to regulate liquor from the reserved police powers seems inconsistent with the decisions in note 3, *supra*, and with the wide police powers over intrastate liquor reserved to the states after the Fourteenth Amendment. Mugler *v.* Kansas, 123 U. S. 623, 8 Sup. Ct. 273.

[7] 26 U. S. STAT. AT LARGE, 313.

[8] *In re* Rahrer, 140 U. S. 545, 11 Sup. Ct. 865.

[9] See *In re* Rahrer, 140 U. S. 545, 561, 562, 11 Sup. Ct. 865, 869.

a state legislature should also be accepted unless unreasonable, even when it is exercising police powers to which the commerce clause has been held paramount, and that a decision that the state legislature has gone beyond its discretion because uniformity is essential, marks the bounds of reasonableness within which Congress also must keep. But the states, having abdicated their powers by the Constitution, it may be answered, must keep within the narrower bounds of desirability unless Congress by declaring uniformity unnecessary expressly makes their legislative scope coincide with its own.[10] But whatever the theory, the constitutionality of the act is too well settled to question.[11]

The act has been limited by construction, however, to apply only after the liquor has reached the consignee.[12] Thus a state cannot author-

[10] The doctrines involved in these decisions have lately acquired additional interest by the passage of the WEBB ACT. The act provides that the "transportation . . . of liquor . . . into any state, which . . . liquor is intended by any person interested therein to be received, possessed, sold, or kept or in any manner used, either in the original package or otherwise in violation of any law of such state . . . is hereby prohibited." It seems clear that Congress can make a rule stating conditions under which liquor is and is not to be considered a lawful article of interstate commerce. That one of these conditions is the existence of some state law forbidding some use of liquor would not apparently make the act bad as delegating power to state legislatures to make federal law. *Cf.* People *v.* Fire Association of Philadelphia, 92 N. Y. 311; State *v.* Insurance Co. of North America, 115 Ind. 257, 117 N. E. 574. Moreover, as it is clear that the state law referred to must be constitutional according to standards previously established, the act does not directly abdicate any portion of the exclusive jurisdiction of Congress. Hence the act seems valid in so far as it is a direct regulation by Congress.

But as no penalty is provided for the infringement of the act, its practical efficiency depends upon whether or not it indirectly enables the states to confiscate liquors shipped in violation of its conditions. It is by no means clear that the act will have such an indirect effect. If the act can be construed to mean that such liquor is not to be regarded as a subject matter of interstate commerce, then under the first theory discussed above it automatically becomes subject to the state police powers. And the objection that Congress permits the states to determine whether liquor is or is not a fit subject matter for interstate free trade, is not present at least in form. Or if the act can be construed as a declaration of Congress, that the proper regulation of interstate liquor traffic varies with conditions existing in the several states, and hence that uniformity is unnecessary where liquor is intended to be used for an unlawful purpose, then under the second theory such liquor would automatically become subject to state police control. It is true that as to regulations affecting transit uniformity is more desirable than as to those operating only after the goods have reached the consignee, since in the former case to avoid illegal action the seller must be aware of the local rule of every state and town in the nation, while in the latter the consignee need only be familiar with the rule in his own district. Yet undoubtedly Congress could make the intent of "any person interested therein" to use liquor in specified ways a test of illegality; and this condition alone would cast nearly as great a risk on the seller. Hence, in view of the actual diversity of conditions among the several states, it seems clear that Congressional discretion has not been abused outrageously in saying that uniform regulation in each locality is unnecessary.

If either of these interpretations of the Webb Act can be made, a state statute to the effect that "all liquor shipped into this state for illegal purposes may be confiscated," should be sustained. But otherwise it would seem that liquor shipped in violation of the Webb Act, even though such shipment be an offense against the federal government, is still within the exclusive jurisdiction of Congress, and beyond the scope of state legislative control.

[11] See Delamater *v.* South Dakota, 205 U. S. 93, 98, 27 Sup. Ct. 447.

[12] Rhodes *v.* Iowa, 170 U. S. 412, 18 Sup. Ct. 664. This is true even when liquor is shipped C. O. D. and title passes only on delivery, thus making the sale take place in the "dry" state. American Express Co. *v.* Iowa, 196 U. S. 133, 25 Sup. Ct. 182. And

ize seizure in transit even though the consignee be an inebriate; [13] or prevent one from ordering a consignment for his own use.[14] Nor can a carrier refuse a consignment under cover of state prohibition.[15] But the state may regulate the sale of liquor on an interstate steamboat while within its boundaries [16] or the solicitation of orders for interstate shipments.[17] A recent decision holds that under the Wilson Act a state license tax as applied to foreign liquors is valid. *De Bary & Co.* v. *Louisiana*, 227 U. S. 108, 33 Sup. Ct. 239. This seems sound. A liquor regulation, even though it takes the form of a high license tax productive of revenue, is a "police regulation," if so intended, within the meaning of the Wilson Act;[18] and though a distinction is made as to the taxation of interstate and foreign goods, it seems to be founded on the provision of the Constitution forbidding states to lay imposts.[19] Since this statute does not discriminate against foreign liquors and bears no relation to the value of the goods imported, it cannot be objected to as an "import duty." [20]

VALIDITY OF FOREIGN MARRIAGES. — Marriage is a status the creation of which involves a contract made between parties who have a capacity to contract, in accordance with a ceremony prescribed by law. A status being a legal condition, of interest chiefly to the sovereign of the domicile, is usually created by the *lex domicilii*.[1] It would be logical to apply the rule to the creation of the status of marriage. But practical objections of great weight oppose this, especially when the parties are domiciled under different sovereigns. They might be married in one jurisdiction and unmarried in another. The succession of property, legitimacy of issue, and the prevention of concubinage necessitate a rule which will secure uniformity.[2] The rule that the *lex loci contractus* governs alone accomplishes this result.[3] Consequently it is a general rule of the common law that a

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after the carrier's liability has become that of a warehouseman. Heyman *v.* Southern R. Co., 203 U. S. 270, 27 Sup. Ct. 104.

[13] Adams Express Co. *v.* Kentucky, 214 U. S. 218, 29 Sup. Ct. 633.

[14] Scott *v.* Donald, 165 U. S. 58, 107, 17 Sup. Ct. 262, 265; Vance *v.* Vondercook, 170 U. S. 438, 18 Sup. Ct. 674.

[15] Louisville & Nashville R. Co. *v.* Cook Brewing Co., 223 U. S. 70, 32 Sup. Ct. 189.

[16] Foppiano *v.* Speed, 199 U. S. 501, 26 Sup. Ct. 138.

[17] Delamater *v.* South Dakota, *supra*. This case does not come within the letter of the Wilson Act. The court feels that it is within the spirit of the act and analogous to insurance regulations.

[18] Pabst Brewing Co. *v.* Crenshaw, 198 U. S. 17, 25 Sup. Ct. 552; Phillips *v.* City of Mobile, 208 U. S. 472, 28 Sup. Ct. 370.

[19] See American Steel Wire Co. *v.* Speed, 192 U. S. 500, 521, 522, 24 Sup. Ct. 365, 370, 371; May *v.* New Orleans, 178 U. S. 496, 507, 20 Sup. Ct. 976, 979.

[20] See American Steel Wire Co. *v.* Speed, 192 U. S. 500, 522, 24 Sup. Ct. 365, 370. It is worthy of note, however, that in the leading case of Brown *v.* Maryland, 12 Wheat. (U. S.) 419, the duty bore no relation to the value of the goods, but was simply a tax on the privilege of importing. This difficulty seems to have been disregarded in the cases. As that statute was discriminatory the cases are clearly distinguishable.

[1] Blythe *v.* Ayres, 96 Cal. 532, 31 Pac. 915. See 3 Beale, Cases on Conflict of Laws, 516.

[2] See Scrimshire *v.* Scrimshire, 2 Hagg. Cons. 395, 416–417.

[3] See 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, § 845.